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DISTRICT OF DELAWARE  
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MKS INSTRUMENTS, INC. and  
APPLIED SCIENCE AND  
TECHNOLOGY, INC.,

Plaintiffs,

v.

ADVANCED ENERGY INDUSTRIES, INC.,

Defendant.

Civil Action No. 03-469-JJF

**RULE 16 SCHEDULING ORDER**

The parties having satisfied their obligations under Fed. R. Civ. P. 26(f), and the Court having conducted a scheduling conference pursuant to Fed. R. Civ. P. 16 and D. Del. LR 16.2(a) and (b),

IT IS ORDERED that:

1. **Pre-Discovery Disclosures.** The parties agree that the pre-discovery disclosures previously exchanged in the Colorado litigation will be used in this action, and satisfy the requirements of Fed. R. Civ. P. 26(a)(1) and D Del. LR 16.2.

2. **Joinder of Other Parties.** All motions to join other parties shall be filed on or before December 15, 2003.

3. **Discovery.**

(a) Exchange and completion of initial contention interrogatories, identification of fact witnesses and document production shall be commenced so as to be



completed by November 1, 2003. Either party may commence depositions prior to November 1, 2003.

(b) Maximum of thirty-five (35) interrogatories, including contention interrogatories, for each side.

(c) Maximum of one hundred (100) requests for admission by each party to any other party.

(d) Maximum of one hundred and fifty (150) hours of deposition testimony by each party, excluding expert depositions. Each party shall make a sufficient number of witnesses available so as to allow the other party, if it so chooses, to conduct at least seventy five (75) hours of depositions prior to January 1, 2004.

(e) Fact discovery shall be initiated so as to be completed by February 16, 2004.

(f) By December 12, 2003, each party shall serve reports from experts whose testimony will be offered at the hearing on claim construction, and the reports shall address the subject of that testimony.

(h) . The parties shall complete by January 9, 2004 the depositions of experts who will testify at the claim construction hearing. These depositions shall be limited to the scope of the testimony that each such expert expects to render at the claim construction hearing and will not preclude the parties from taking further depositions of these experts in the course of expert discovery.

(i) Reports from retained experts required by Fed. R. Civ. P. 26(a)(2) are due from the parties on the issues as to which each party bears the burden of proof at trial by March 5, 2004; rebuttal reports are due on March 19, 2004.



(j) The parties shall complete all expert discovery by April 9, 2004.

4. **Discovery Disputes.**

(a) A party seeking discovery which the opposing party refuses to provide shall file a motion (no brief) pursuant to Rule 37 of the Federal Rules of Civil Procedure and Local Rule 37.1. Said motion shall not exceed a total of four (4) pages. An Answer to the Rule 37 motion, not to exceed four (4) pages, shall be filed within five (5) days of service of the motion. No reply is permitted.

(b) All papers shall set forth in a plain and concise manner the issue(s) in dispute, the party's position on the issue(s), and the reasons for the party's position.

(c) Upon receipt of the Answer, the movant shall notify Chambers by e-mail at [jjf\\_civil@ded.uscourts.gov](mailto:jjf_civil@ded.uscourts.gov) that the dispute is ready for decision.

(d) Upon the movant's e-mail, the Court will determine whether a conference is necessary and advise the parties accordingly.

(e) There is no limit on the number of Rule 37 motions a party may file, unless otherwise ordered by the Court.

5. **Amendment of the Pleadings.** All motions to amend the pleadings shall be filed on or before December 15, 2003.

6. **Advice of Counsel.** Defendant shall notify plaintiffs on or before January 9, 2004 whether defendant intends to rely on the advice of counsel in response to plaintiffs' allegation of willful infringement.

7. **Claim Construction.** Each party shall file and serve an opening brief on claim construction issues, including the res judicata or collateral estoppel effect, if any, of this Court's prior claim construction rulings in Civil Action No. 00-1004-JJF, on November 26, 2003.



Answering briefs shall be filed and served on December 17, 2003. A claim construction hearing will be held by the Court on January 13, 2004, at 12:30 p.m. in Courtroom No. 4B on the 4th Floor, Boggs Federal Building, Wilmington, Delaware.

8. **Case Dispositive Motions.** Any case dispositive motions, pursuant to the Federal Rules of Civil Procedure, shall be served and filed with an opening brief on or before April 23, 2004. Briefing shall proceed in accordance with D. Del. LR 7.1.2 and the Court's Memorandum Order of July 24, 2003. No case dispositive motion may be filed more than ten (10) days from April 23, 2004 without leave of the Court.

9. **Application by Motion.**

(a) Any applications to the Court shall be by written notice filed with the Clerk of the Court in compliance with the Federal Rules of Civil Procedure and the Local Rules of Civil Practice for the United States District Court for the District of Delaware (amended effective January 1, 1995). Any non-dispositive motion shall contain the statement required by D. Del. LR 7.1.1. Parties may file stipulated and unopposed Orders with the Clerk of the Court for the Court's review and signing. The Court will not consider applications and requests submitted by letter or in a form other than a motion.

(b) No telephone calls shall be made to Chambers.

(c) Any party with a true emergency matter requiring the assistance of the Court shall e-mail Chambers at: [jjf\\_civil@ded.uscourts.gov](mailto:jjf_civil@ded.uscourts.gov). The e-mail shall provide a short statement describing the emergency.

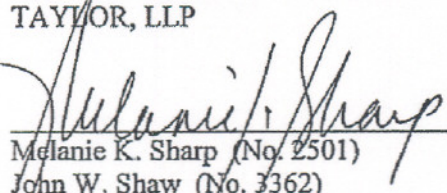
10. **Pretrial Conference.** A Pretrial Conference will be held on June 2, 2004 at 1:30 p.m., in Courtroom No. 4B on the 4th Floor, Boggs Federal Building, Wilmington, Delaware. The Federal Rules of Civil Procedure and Rule 16.4 of the Local Rules of Civil Practice for the



United States District Court for the District of Delaware (amended effective January 1, 1995)  
shall govern the pretrial conference.

11. **Trial.** Trial will commence at 9:30 a.m. on July 19, 2004, in Courtroom 4B on  
the 4th Floor, United States Courthouse, Boggs Federal Building, Wilmington, Delaware.

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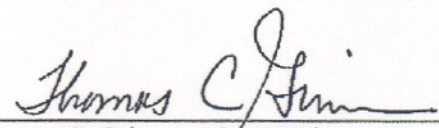
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Attorneys for Defendant

SO ORDERED this 22 day of August, 2003.

  
UNITED STATES DISTRICT JUDGE